

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**APPEAL FROM ORDER No. 380 of 2007****With****CIVIL APPLICATION No. 13275 of 2007****For Approval and Signature:****HONOURABLE MR.JUSTICE DN PATEL**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
?

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**KOMALBEN AJITBHAI SHAH @ KOMALBEN DARSHANBHAI SHAH & 1 -
Appellant(s)**

Versus

KARTIKBHAI JASUBHAI PATEL & 9 - Respondent(s)

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Appearance :

Mr. Mihir Joshi, Senior Counsel for NANAVATI ASSOCIATES for
Appellant(s) : 1 - 2.

MR HARIN P RAVAL for Respondent(s) : 1,

None for Respondent(s) : 2, 2.2.1, 2.2.2, 2.2.3, 2.2.4, 2.2.5, 2.2.6,
2.2.7, 2.2.8, 2.2.9 - 4, 4.2.1, 4.2.2, 4.2.3, 4.2.4, 4.2.5, 4.2.6,
4.2.7, 4.2.8, 4.2.9 - 10.

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CORAM : HONOURABLE MR.JUSTICE DN PATEL**Date : 22/10/2007****ORAL JUDGMENT**

This Appeal From Order has been preferred against the order passed by the Principal Senior Civil Judge, Ahmedabad [Rural], Ahmedabad dated 15th of February, 2007 below Exh. 5 in Special Civil Suit No. 50 of 2007 whereby without issuing notice the trial Court has granted ad-interim relief. Against this order, the original-defendants No. 8 and 9 have filed the present Appeal From Order.

2. Having heard the learned counsel for both the parties and looking to the facts and circumstances of the case, I hereby quash and set aside the order passed by the Principal Senior Civil Judge, Ahmedabad [Rural], Ahmedabad dated 15th of February, 2007 below Exh. 5 in Special Civil Suit No. 50 of 2007 mainly for the following facts and reasons;

I. It appears that the present respondent No.1 is the original-plaintiff who has instituted the Special Civil Suit No. 50/2007 for the specific performance of an Agreement to Sell dated 23rd of May 1991. Thus the suit was instituted by the original-plaintiff after 15 years from the Agreement to Sell.

II. It also appears from the facts of the case that the suit was instituted by the plaintiff on 14th of February 2007 and the trial Court has not issued any notice to the original-defendants and without issuing any notice the following order has been passed;

Heard, read the plaint document to appears that Plaintiff has prima facie if interim reliefs not granted them purpose of the suit will be deleted. Hence, issue urgent show cause notice R/O. 2.3.2007, meanwhile defendant are directed to maintain status quo about the suit land.

III. It also appears from the facts of the facts of the case that originally, defendants No. 1 to 4 are the owners of the property; they sold the suit property by Registered Sale Deed on 9th of July 2004 to defendants No. 5 and 6; and these defendants No. 5 and 6 sold the property by Registered Sale Deed dated 6th of February 2006 to the present appellants [original-defendants No. 8 and 9]. Thus, there is a Registered Sale Deed in favour of the original-defendants No. 5 and 6 as well as in favour of original-defendants No. 8 and 9.

IV. It also appears from the facts of the case that when the present appellants [original-defendants No. 8 and 9] had applied to

Collector, Ahmedabad, for getting Non-Agricultural usage permission under Section 65 of the Bombay Land Revenue Code, 1879, they came to know about the order passed by the trial Court dated 15th of February 2007. It is alleged by the present appellants [original-defendants No. 8 and 9] that after passing the order dated 15th February 2007 they were not served with the order for months together and only in the month of September 2007 when the N.A. Permission was refused by the Collector, they came to know that there is some order passed by the Trial Court and immediately they rushed to the trial Court and filed their appearance on 11th September 2007 and they preferred appeal before this Court on 12th September 2007. Thus the impugned order dated 15th February 2007 is not served, even on today, upon the present appellants [original-defendants No. 8 and 9]. No notice has been issued to the present appellants.

V. It also appears from the contentions raised by the learned counsel appearing for the respondents that no written statement has been filed by the present appellants before the trial Court; on five different dates the present appellants have asked for time before the Trial Court; there is no reply before the Trial Court; Appeal is not tenable before this Court; on merits the original-plaintiffs have got good case as there is no signature of the original-plaintiffs on deed of cancellation

dated 13th of February 1992 which is alleged by the original-defendants; and that reasons have been given by the Trial Court in the impugned order.

VI. In view of the aforesaid facts, one fact is clear that there are Registered Sale Deeds in favour of defendants No. 5 and 6 dated 9.7.2004 and suit property has been further transferred, from these defendants to the present appellants [original-defendants No. 8 and 9] by registered Sale Deed dated 6th of February 2006. They are also in possession of the suit property. Had a notice been issued by the Trial Court, these facts could have been brought to the trial Court and the facts would have been properly appreciated by the Trial Court. The original-defendants have instituted the suit on the basis of Agreement to Sell dated 23rd of May 1991. A period of 1 ½ decade has been passed and thereafter the suit has been instituted. Looking to this also, a notice for shorter period ought to have been issued. Looking to the Proviso of Order XXXIX, Rule 3, the Trial Court must give reasons for its opinion that the object of granting injunction would be defeated by delay, then only without issuing notice stay can be granted. In the facts of the present case, looking to the order passed by the Trial Court, no reason has been given by the Trial Court as required by Proviso to Rule 3 of Order XXXIX of Civil Procedure Code. No notice has been issued by the Trial Court to the defendants. Looking to the facts and circumstances, I

hereby quash and set aside the order passed by the Trial Court. It is submitted by the counsel appearing for the respondent No.1 [original-plaintiff] that now the matter is kept by the Trial Court for further hearing on 24th October 2007. If the present appellants want to file reply, they should file reply and the Trial Court shall decide the matter on its own merits without being influenced by the order passed by this Court as well as without being influenced by the order dated 15th February 2007. The Trial Court is directed to hear and decide the Exh.5 Injunction Application preferred by the original-plaintiff in Special Civil Suit No. 50/2007 as expeditiously as possible preferably on or before 3rd of December, 2007.

4. Counsel for the respondent No.1 prays for stay of the order. Counsel for the appellants objected to it. Looking to the facts and circumstances, I see no reason to stay the operation of this order. The request made by the learned counsel appearing for the respondent No.1 is not accepted. The appeal is allowed to the aforesaid extent. The Civil Application stands disposed of.

[D.N. Patel, J.]

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